

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

**IN RE COMPACT DISC MINIMUM** ]  
**ADVERTISED PRICE** ]  
**ANTITRUST LITIGATION** ]  
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 ]

**MDL Docket No. 1361**

(This Document Applies to *Trowbridge, et al. v. Sony Music Entertainment, Inc., et al.*, Docket No. 2:00-MD-1361-P-H)

**ORDER ON FINAL *CY PRES* DISTRIBUTION OF EXCESS SETTLEMENT FUNDS**

This order concerns the final distribution of excess funds from a class settlement created as the result of multidistrict CD antitrust litigation. The class members (here, music club members) have received their benefit, the attorneys have received their fees, and costs have been deducted, resulting in more than \$276,000 remaining in escrow.<sup>1</sup>

In my Order of June 10, 2005, I decided to award this money to charities (proposed by the parties and an objector) through the doctrine of *cy pres*, in accordance with Section 8.2 of the Amended Stipulation of Settlement. After careful review of the various proposals, in my Order of August 9, 2005, I found that WKCR-FM and the National Guild of Community Schools of the Arts (the “Guild”) were the most appropriate recipients in light of the *cy pres* criteria I identified. At that time I also directed class counsel to file a detailed accounting of the funds available for *cy pres* distribution, and requested further clarification from the two charities on their proposals. The accounting

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<sup>1</sup> In the Final Accounting filed by class counsel, the exact total remaining in the escrow fund as of August 29 was \$275,136.98, including interest accrued through July *only*. Counsel estimated that \$600 in interest would accrue for the month of August, and presumably the interest that has accrued for the month of September will be a similar figure. Thus, the total estimated amount remaining in escrow on this date will be approximately \$276,336.98.

has been filed, I have received the necessary information from the charities, and the only remaining action is to distribute the funds.

Accordingly, *cy pres* distribution of the excess funds shall be as follows:<sup>2</sup>

WKCR-FM will receive \$114,997.00, to be used for the creation of “Studio D.” WKCR shall use \$109,997.00 of the funds for the purchase of various equipment as outlined in its Letter of September 22, 2005.<sup>3</sup> The additional \$5,000.00 shall be used for equipment installation and the minor architectural changes required to make Studio D a useable facility, as it indicated such need in its proposal. Over the period of three years, WKCR shall submit annual reports detailing the successful purchase and use of the equipment, in accordance with the timeline and goals set forth in its Letter.

The Guild will receive \$156,000.00 to be used for the creation of an Online Resource Center. The Guild shall use these funds for the hardware, software, programming, research, writing, editing and design necessary for its creation, as outlined in its Letter of July 22, 2005. The Guild will also receive the remainder of the excess funds left over when all other distributions have been made, estimated to be a little more than \$5,300.00. This additional money shall be used in the Guild’s discretion only for one of the purposes set forth above. Over the period of three years, the Guild shall submit annual

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<sup>2</sup> Because I have already explained in previous Orders my reasons for choosing these charities, I find it unnecessary to do so again, and merely reiterate such information as is necessary to explain the conditions to which they are subject.

<sup>3</sup> The figure of \$109,997.00 derives from the second, and more detailed, proposal that WKCR submitted upon my direction. The initial proposal requested a total of \$107,000.00, but neglected to price a certain filter set. In the second proposal, the filter set was priced, and several items’ prices increased or decreased, presumably for the sake of accuracy. I have reviewed these minor changes and find them reasonable, as well as the newly-priced filter set. Thus, the second proposal’s figure will be adopted.

reports detailing its expenditure of the funds, and the creation of the website, in accordance with the timeline and goals set forth in its Letter.

In addition to the above specific conditions imposed upon each organization, several general provisions are applicable to both:

1. Acceptance of the funds shall constitute an undertaking by the organization to use the funds in the manner proposed and summarized in this Order. Each distribution is to be used solely to carry out the objectives set forth in the respective proposals and letters, and is subject to the conditions contained in the proposals and this Order. No money from a distribution may be used for administrative expenses.

2. This Court shall retain jurisdiction to implement and enforce this Order.

3. If an organization does not accept the distribution or conditions, the Court will make an appropriate disposition of the distribution involved at a future time.

### **ORDER**

1. Class counsel are directed to inform WKCR-FM and the Guild of this decision in writing, accompanied with a copy of this Order.

2. Within ten days of being informed, an officer of each organization must advise this Court and class counsel in writing if it accepts the funds and the conditions attached, as stated in this Order.

3. Within ten days of notification of acceptance, class counsel are directed to issue to the organization a check drawn on the settlement escrow fund, as specified here:

- a. WKCR-FM  
515 Lerner Hall, Columbia University  
New York, NY 10027  
\$114,997.00
- b. National Guild of Community Schools of the Arts  
520 Eighth Avenue, Suite 302  
New York, NY 10018  
\$156,000.00 plus the remainder of the escrow fund

4. Upon receipt of the funds, each organization is directed to execute an acknowledgement and receipt, attached as Exhibit A, to be returned to class counsel. Class counsel must then file these documents with the Court, as well as a final accounting of distributions.

5. The organizations are directed to file reports annually with the Court, subject to the conditions of this Order, for the period of three years. It is my hope that the third report shall be the final report, and that the Court's continuing involvement with this matter will come to an end at that time.

**SO ORDERED.**

**DATED THIS 30TH DAY OF SEPTEMBER, 2005**

/s/D. Brock Hornby  
**D. BROCK HORNBY**  
**UNITED STATES DISTRICT JUDGE**

**EXHIBIT A**

**RECEIPT AND ACCEPTANCE OF FUNDS AND CONDITIONS FROM THE  
IN RE COMPACT DISC MINIMUM ADVERTISED PRICE ANTITRUST LITIGATION  
SETTLEMENT FUND**

On behalf of \_\_\_\_\_, I hereby accept and acknowledge receipt of funds in the amount of \$\_\_\_\_\_ from the In Re Compact Disc Minimum Advertised Price Antitrust Litigation settlement fund. I accept these funds subject to the terms and conditions set out in proposals and letters to the District Court, District of Maine, and summarized in the Court's Order of September 30, 2005. Acceptance of these funds and the conditions attached has been approved as required by the organization's governing documents.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Position or Title)

**IN RE CD MINIMUM ADVERTISED PRICE ANTITRUST LITIGATION, MDL DOCKET NO. 1361**

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